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C O N F I D E N T I A L SECTION 01 OF 03 ASHGABAT 001015

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SUBJECT: U.S., UK, FRANCE AND OSCE UNITE BEHIND FREEDOM OF
MOVEMENT CASE IN TURKMENISTAN

REF: ASHGABAT 950

Classified By: Charge d'Affaires a.i. Jennifer L. Brush for reasons 1.4
(B) and (D).

Summary and Comment

¶1. (C) The U.S., United Kingdom, French and OSCE missions in Ashgabat have agreed to send Turkmenistan's Ministry of Foreign Affairs (MFA) individual diplomatic notes protesting a freedom of movement case in which the complainants, acting under the advice of the OSCE, have recently exhausted all legal remedies. The case, involving the niece of a former Central Bank chairman accused of corruption who was denied permission to depart Turkmenistan, is the best-documented freedom of movement violation embassy has seen so far under Turkmenistan's 2005 Law on Migration. The case constitutes an exemplar for U.S. demands in connection with extension of the Jackson-Vanik waiver that there be greater transparency in reasons for inclusion on Turkmenistan's black list and steps that must be taken to get one's name removed from the list. It is also one of three specific cases embassy has advocated as requisite for extending the amendment. Benjamin Moreau, the OSCE mission's human dimension officer (please protect), told embassy he has requested legal experts at the OSCE's Warsaw-based Office for Democratic Initiatives and Human Rights (ODIHR) to review and comment on the Law on Migration, and hopes that ODIHR's conclusions and recommendations can be passed to Turkmenistan's leaders by either OSCE Ambassador to Turkmenistan Djikic or the ODIHR's Ambassador Christian Strohal, if he can be persuaded to make a visit to Ashgabat. End Summary and Comment.

Annaeva Case

¶2. (SBU) In June, embassy received a visit from Selbi Annaeva, the niece of former Central Bank of Turkmenistan chairman and deputy chairman of the Cabinet of Ministers Hudayberdi Orazov, who was accused of corruption. Annaeva, who had returned to Turkmenistan from China to visit her family, had been studying in the Beijing University of Languages and Culture; she had been twice denied permission to board a plane back to Beijing. Embassy referred Annaeva and her mother, Svetlana Orazova, to the OSCE mission for legal advice and raised the case with the Ministry of Foreign Affairs in a diplomatic note. Charge subsequently has raised the case with Foreign Minister Meredov on numerous occasions

noting it was one of three cases the USG was citing as reason for not extending the Jackson-Vanik Amendment waiver.

¶3. (SBU) Since June, Annaeva, advised by the OSCE mission's expert in Turkmenistan law, has been navigating the legal system here in an attempt to have the ban on her departure lifted. Embassy has been following the case closely through the OSCE. In September, Annaeva finally exhausted all legal remedies after Turkmenistan's Supreme Court referred her case back to the Ashgabat city court, which upheld its original decision. The OSCE mission's human dimension officer, Benjamin Moreau, on September 27 passed to the embassy a note verbale which the OSCE mission had sent to the MFA on September 25; embassy agreed to send in a parallel diplomatic note in order to stress the importance of the case. The UK and French ambassadors, when emboff told them of the case, also agreed to raise the case separately with the MFA.

U.S. Diplomatic Note

¶4. (SBU) Begin text of U.S. diplomatic note 965/06 of September 28:

"The Embassy of the United States....has the honor to request the Ministry's assistance in obtaining information regarding the travel restriction imposed on Ms. Selbi Annaeva, who was prevented from leaving Turkmenistan on June 7, 2006.

Ms. Annaeva is a student at the Beijing University of Languages and Culture. On 31 May 2006, she arrived in Ashgabat to visit her family. On 7 June 2006, when she was

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returning to China to resume her studies, the State Service for Registration of Foreign Citizens told Ms. Annaeva without providing a reason that she was prohibited from leaving Turkmenistan.

Ms. Annaeva's mother, Svetlana Orazova complained to the State Service for Registration of Foreign Citizens and other authorities. The State Service for Registration of Foreign Citizens did not answer her complaint. The Prosecutor-General's Office sent a letter informing that Ms. Orazova's family members are prohibited from leaving the country on the basis of Article 32 of the Law on Migration of December 7, 2005. However, the letter did not specify which of the grounds for temporary limitation on the right to exit spelled out in paragraphs 1-11 of Article 32(1) of the Law on Migration was applied to Ms. Annaeva and for how long.

Ms. Orazova has appealed the exit ban in courts (copies of the appeals are attached). On July 29, 2006, the Kopetdag district court did not accept Ms. Orazova's suit for consideration on its merits. Ms. Orazova lodged a request for an appellate hearing with the Ashgabat city court, which turned down the appeal. The city court admitted that it was not clear from the case materials which of the criteria listed in Article 32(1) of the Law on Migration was the grounds for banning Ms. Orazova's daughter from exiting Turkmenistan. However, the city court pointed to Article 33(2) of the Law on Migration, which notes that preventing citizens of Turkmenistan from exiting Turkmenistan on the grounds stipulated in paragraphs 2-4 and 7-8 of Article 32(1) of the Law may not be appealed. Therefore, the city court argued, the district court had lawfully refused to accept Ms. Orazova's suit for consideration. Ms. Orazova, then appealed to the Supreme Court for reconsideration of both the district and city court decisions under the supervisory review procedure. The Supreme Court referred the case back to the city court, which upheld its original decision.

The Embassy of the United States understands that the right to exit Turkmenistan is regulated in Article 1 of the Law on Exiting and Entering Turkmenistan by the Citizens of

Turkmenistan of 15 June 1995 as amended on 22 April 2002 and 14 June 2003, and Article 26(1) of the Law on Migration. According to these articles, the right of departure may only be temporarily limited on the basis of Article 32 of the Law on Migration; Articles 16 and 21 of the Constitution of Turkmenistan stipulate that the authorities may restrict the rights of citizens only in strict compliance with the law. Therefore, for a departure ban to be valid and lawful, it must be (1) temporary and (2) meet at least one of criteria listed in Article 32(1) of the Law on Migration. Citizens of Turkmenistan have the right to be informed in an official document issued by a relevant authority of the grounds under which their rights are being curtailed. If such a document is not issued, any ban on exit should be viewed as null and void and contrary to the law of Turkmenistan.

The Embassy reiterates to the Ministry the high significance it attaches to the issue of freedom of movement in Turkmenistan and expresses its concern about travel restriction cases in Turkmenistan, as well as the consequences for extension of the Jackson-Vanik Amendment waiver.

(Complimentary closing)"

End Text of U.S. Diplomatic Note 965/06.

Follow-up Action by the OSCE Mission

¶15. (C) Moreau told emboff that he had also requested international human rights law experts at the OSCE's ODIHR to review and comment on the Law on Migration. The preliminary assessment, which identified and made recommendations on a number of problem areas in the law, had already been completed; Moreau was still ironing out a few areas of misunderstanding. Moreau hoped that the review could be passed to the Government of Turkmenistan soon, preferably during a visit by ODIHR's Ambassador Strohal, if the latter could be persuaded to abandon his position that the human rights situation in Turkmenistan was so bad that the country

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did not merit a visit by ODIHR's head. If Strohal could not be persuaded to visit, then Moreau planned to have OSCE Ambassador to Turkmenistan Djikic deliver the text to Minister of Foreign Affairs Rashit Meredov.

BRUSH